

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

OLIVER UDEMBA,)	
)	
Plaintiff,)	
v.)	CIVIL ACTION NO: 05 CV 11161 RGS
)	Leave to File Granted on October 5, 2006
CUMBERLAND FARMS, INC.)	
AND EMILE C. TAYEH,)	
)	
Defendant.)	

**DEFENDANT CUMBERLAND FARMS, INC.'S
REPLY TO PLAINTIFF'S OPPOSITION TO THE
COMPANY'S MOTION FOR RECONSIDERATION**

In his Opposition to the Company's motion, the Plaintiff relies upon the fact that the EEOC found "reasonable cause" to credit some or all of the allegations in the Plaintiff's charge of discrimination. However,

the fact that "an administrative agency has reached a contrary conclusion as to the merits of a plaintiff's case is not in any sense conclusive; nor does it bar the allowance of attorney's fees to a defendant" who has prevailed in a subsequent judicial proceeding. *See Carrion v. Yeshiva University*, 535 F.2d 722 (CA 2, 1976).

Charves v. The Western Union Telegraph Co., 711 F.2d 462, at 464 (1st Cir. 1983).

DATED at Portland, Maine this 5th day of October, 2006.

CUMBERLAND FARMS, INC.

By its attorneys,

MOON, MOSS & SHAPIRO, P.A.
Ten Free Street, P. O. Box 7250
Portland, ME 04112-7250
(207) 775-6001

/s/Philip J. Moss

Philip J. Moss, BBO# 358020

CERTIFICATE OF SERVICE

I, Philip J. Moss, attorney for Cumberland Farms, Inc., hereby certify that on October 5, 2005, I electronically filed Defendant Cumberland Farms, Inc.'s Reply to Plaintiff's Opposition to the Company's Motion for Reconsideration with the Clerk of Court using the CM/ECF system, which I understand will send electronic notification of such filing to the following:

Scott A. Lathrop, Esq.
Scott A. Lathrop & Associates
122 Old Ayer Road
Groton, MA 01450
(BBO No. 287820)

Dated: October 5, 2006

/s/Philip J. Moss
Philip J. Moss, Esq., BBO# 358020
MOON, MOSS & SHAPIRO, P.A.
Ten Free Street
P. O. Box 7250
Portland, ME 04112-7250
Tel: (207) 775-6001
Fax: (207) 775-6407
pmoss@moonmoss.com